

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

**E.F., by his next friend and parent, GINA FIGARATTO,**

**Plaintiff**

C.A. No. 05-11391GAO

**v.**

**AMERICA WEST AIRLINES, INC.,**

**Defendant**

**NOTICE OF REMOVAL TO THE UNITED STATES DISTRICT COURT**  
**28 U.S.C. § 1441 (A)**

**TO THE JUDGES OF THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF MASSACHUSETTS:**

The Defendant, America West Airlines, Inc. (hereinafter "AWA" or the "Defendant"), pursuant to Section 1441 of Title 28 of the United States Code and Rule 81.1 of the Local Rules for the United States District Court, District of Massachusetts, herewith files this Notice of Removal in the United States District Court for the District of Massachusetts from the Superior Court of the Commonwealth of Massachusetts in and for Plymouth County and states the following in support of this Notice of Removal:

1. The Plaintiff, E.F., by his next friend and parent Gina Figaratto, (hereinafter "E.F." or the "Plaintiff"), filed a civil action against AWA on or about June 8, 2005, in the Superior Court of the Commonwealth of Massachusetts in and for Plymouth County, Civil Action No. CV2005-0665, E.F., by his next friend and parent, Gina Figaratto v. America West Airlines, Inc.
2. On or about June 13, 2005, the Plaintiff served AWA with a copy of the Complaint via service on its Corporate Agent. See Service of Process Transmittal from CT Corporation.

3. This Notice of Removal is filed in the United States District Court for the District of Massachusetts within the time allowed by law for removal of civil actions. The documents attached hereto as Exhibit "A" constitute all of the process and pleadings served upon AWA by the Plaintiffs to date.
4. This action is removable to this Court pursuant to Section 1441(a) and (b) of Title 28 of the United States Code, because this Court has original jurisdiction under Section 1332 of Title 28 of the United States Code.
5. This action is removable to this Court pursuant to 28 U.S.C. §1441(a) because this Court has original jurisdiction pursuant to 28 U.S.C. §1332(a)(1) in that the plaintiff and the defendant are citizens of different states. Plaintiff is a resident of Carver, Massachusetts. AWA is a Delaware corporation and its principal place of business is located in Tempe, Arizona. Thus, diversity of citizenship exists. Moreover, the amount in controversy exceeds \$75,000 based upon the plaintiff's claims that he is entitled to monetary damages relating to his alleged emotional distress injuries in the amount of \$2,000,000.00. Thus, in the event plaintiff prevails on his claim against AWA and AWA is adjudged liable for damages incurred by the plaintiff, plaintiff claims he is entitled to recover more than the \$75,000 jurisdictional amount.
6. This Notice of Removal is being filed within thirty (30) days of service and receipt of the Summons and Complaint in accordance with Section 1446(b) of Title 28 of the United States Code.
7. A notice of the filing of this Notice of Removal and a true copy of this Notice of Removal will be filed with the Clerk of the Superior Court of the Commonwealth of Massachusetts in and for Plymouth County, as required by Section 1446(d) of Title 28 of the United States Code.
8. Pursuant to Local Rule 81.1(a) shall, within thirty (30) days after filing a notice for removal of the action from state court to this court, file certified or attested copies of all records and proceedings in the state court and a certified or attested copy of all docket entries in the state court. See LR 81.1(a).

WHEREFORE, America West Airlines, Inc. prays that the action currently pending in the Superior Court of the Commonwealth of Massachusetts in and for Plymouth County be removed to the United States District Court for the District of Massachusetts.

Respectfully submitted,  
AMERICA WEST AIRLINES, INC.,

By Its Attorneys,

Maynard M. Kirpalani, BBO#273940  
Carey Bertrand, BBO#650496  
Wilson, Elser, Moskowitz,  
Edelman & Dicker, LLP  
155 Federal Street  
Boston, MA 02110  
(617) 422-5300

Dated: July 7, 2005

CERTIFICATE OF SERVICE

I, Maynard M. Kirpalani, hereby certify that a true copy of the foregoing *document* was served upon all counsel of record by forwarding a copy of the same, first class mail, postage prepaid on this 7th day of July 2005 to:

Matthew J. Donnelly  
Donnelly & Valente  
231 CJC Hwy, Suite 202  
Cohasset, MA 02025

Maynard M. Kirpalani

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

EF, by his next friend and parent, Gina Figaratto

(b) County of Residence of First Listed Plaintiff Plymouth, MA  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Matthew J. Donnelly, Donnelly &amp; Valente, 231 CJC Hwy, Suite 202 Cohasset, MA 02025, (781) 383-1011

## DEFENDANTS

America West Airlines, Inc.

County of Residence of First Listed Defendant Maricopa, Arizona  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Maynard M. Kirpalani, Carey L. Bertrand, Wilson, Elser, Moskowitz, Edelman &amp; Dicker, LLP, 155 Federal St., Boston, MA

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	PTF	DEF	Citizen of Another State	PTF	DEF
<input checked="" type="checkbox"/> 1	<input type="checkbox"/>	<input type="checkbox"/> 1	<input type="checkbox"/>	<input type="checkbox"/> 4	<input type="checkbox"/> 4

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud		<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage		<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage		<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Product Liability		<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury			<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability				<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise				<input type="checkbox"/> 890 Other Statutory Actions
	<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<b>Habeas Corpus:</b>	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Torts Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RSJ (405(g))	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition		

## V. ORIGIN

(Place an "X" in One Box Only)

<input type="checkbox"/> 1 Original Proceeding	<input checked="" type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
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Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 USC 1332(a) and 28 USC 1441(a)

## VI. CAUSE OF ACTION

Brief description of cause:

## VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

07/07/2005

SIGNATURE OF ATTORNEY OR COUNSEL

## FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IPP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS1. Title of case (name of first party on each side only) E.F. v. America West Airlines, Inc.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.

II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, \*Also complete AO 120 or AO 121  
740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950. for patent, trademark or copyright cases

III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310,  
315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371,  
380, 385, 450, 891.

IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660,  
690, 810, 861-865, 870, 871, 875, 900.

V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES  NO 

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES  NO 

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES  NO 

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES  NO 7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).YES  NO A. If yes, in which division do all of the non-governmental parties reside?Eastern Division  Central Division  Western Division 

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division  Central Division  Western Division 

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES  NO 

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Maynard M. Kirpalani and Carey Bertrand, Wilson, Elser, Moskowitz, Edelman & DickerADDRESS 155 Federal Street, Boston, MA 02110TELEPHONE NO. (617) 422-5300

**SEALED DOCUMENT**

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS.

SUPERIOR COURT DEPARTMENT  
DOCKET NO.

E. F. his next friend and parent GINA M.  
FIGARATTO,

Plaintiff,

v.

AMERICA WEST AIRLINES Inc.,

Defendant,

**COMPLAINT**

**PARITIES**

1. The Plaintiff, E. F. is an individual natural person of the tender years (six (6) years old ) and resides of Plymouth County, Massachusetts.
2. GINA M. FIGARATTO, (hereinafter "Ms. Figaratto") is an individual natural person, and is the parent and legal guardian of E.F.
3. The Defendant America West Airlines Inc. (hereinafter "AWA") is a corporation duly organized under the laws of Delaware and maintains a principle place of business in Tempe Arizona.

**FACTS**

4. At all times relevant hereto, AWA was acting through its authorized agents, servants, representatives and/or employees.

5. In January 2004, Ms. Figaratto was desirous of sending her two minor children (Destiny d/o/b 4/17/98 and E.F. d/o/b 2/9/99) to Phoenix Arizona to visit their father, Scott Startozzi (Hereinafter, "Startozzi")
6. In January 2004, AWA offered a chaperone service for minor children traveling unaccompanied by an adult for an additional fee.
7. On or about January 13, 2004, Ms. Figaratto contacted AWA's servant, agent and/or representative regarding AWA's chaperone program a.k.a. MVP/UM Special Services Program.
8. AWA's representative informed Ms. Figaratto that for eighty (\$80.00) dollars, the children would be assigned to a flight attendant. The attendant would introduce himself/herself to the parent and children at gate, then escort the children onto the aircraft and seat them next to his/her station for supervision during the flight. At the end of the flight the attendant would escort them off the aircraft and to the custody of a prearranged custodian.
9. Based on the aforesaid representations and promises made by AWA's representative, Startozzi booked two fairs for the children aboard America West flight 9501 departing Boston's Logan International on February 12, 2004 and arriving Phoenix Arizona the same day. In addition to the regular fair, Startozzi paid the additional charge for the unaccompanied minor chaperone service.
10. On February 12, 2004, Ms. Figaratto brought the children to the terminal and processed the necessary paperwork. She then took the children to the gate to meet the flight attendant.
11. The Gate Attendant, Claudia Cook told Ms. Figaratto that such introductions were not AWA's policy. Ms. Cook refused to call the attendant to the gate or

allow Ms. Figaratto to escort the children onto the aircraft and/or otherwise refused to allow Ms. Figaratto to meet the assigned flight attendant as agreed.

12. The children were escorted onto the aircraft by AWA employees and seated in row 18. There is no flight attendant station located in that part of the aircraft.
13. During the flight, the assigned attendant was constantly absent attending other duties, paid little to no attention to the needs and/or supervision of the children and/or otherwise ignored them.
14. During the flight, E. F. needed assistance to go to the lavatory but no flight attendant was available to assists him and as a result, Eric defecated in his pants.
15. A passenger went to the forward cabin to find the flight attendant and advise them of the situation and E. F. need for immediate attention.
16. Rather than assisting E. F. personally the flight attendant allowed a male passenger, a complete stranger to E. F., to take E. F. into the lavatory alone presumably to clean him.
17. While in the bathroom, E. F. was stripped of his clothes and assaulted by the male passenger.
18. Upon arrival in Phoenix, two attendants escorted the children to Startozzi and informed Startozzi of the incident. At that time an attendant admitted that a male passenger had "volunteered" to take E. F. to the bathroom to clean him, then accused Startozzi of misrepresenting E. F. age.
19. Startozzi then examined E. F.. He found his underwear was missing, that he had not been cleaned and that fecal matter remained all over his rectum.

20. Ms. Figarotto notified the airline about the incident and the airline claimed to have conducted an internal investigation.
21. By written correspondence dated February 20, 2004, AWA admitted a passenger and stranger to E. F. was permitted to take E. F. into the lavatory alone. However, AWA now identifies the stranger, as a female passenger in direct contradiction to the statements of all knows witnesses to the incident including but not limited Destiny.
22. Immediately thereafter E. F. began suffering from severe emotional trauma, stress and anxiety all of which are attributed to the February 12, 2004 incident aboard America West flight 9501.
23. As a consequence thereof, E. F. began therapy and remains therein through the present day in an ongoing process to heal himself of his emotional and psychological injuries.

COUNT I  
(Negligence)

24. The Plaintiff restates and re-alleges the factual allegations set forth in paragraphs 1 through 23 above and incorporates the same herein by reference as if stated in full and at length.
25. AWA had a duty to use reasonable care in the supervision of E. F. and protect him from foreseeable harm and injury.
26. AWA failed to use reasonable care in the supervision of E. F. and/or otherwise was careless, reckless and negligent with respect to E. F. welfare, health and safety.

27. As a direct and proximate result of AWA's negligent, E.F. sustained damages including but not limited sever emotional distress, anxiety, stress and/or psychological injury.

**PRAYER**

WHEREFORE, the Plaintiff respectfully request that this Honorable Court:

- A. Find for the Plaintiff and enter Judgment against the Defendant;
- B. Order the Defendant to pay the Plaintiff's damages as found by the Court;
- C. Grant such other relief that is just and reasonable under the circumstances.

**JURY DEMAND**

The Plaintiff respectfully demands trial by jury as to all issues of fact material to the present case.

Plaintiff, E. F.  
Through his next friend and parent,  
By their Attorney,



Matthew J. Donnelly  
DONNELLY & VALENTE  
231 CJC Hwy, Suit 202  
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BBO# 646286